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NO.

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1986

REBECCA MONTGOMERY, wife of/and
ANTHONY A. SANCHEZ

Petitioners

VERSUS

THE BOARD OF ZONING ADJUSTMENTS OF THE CITY OF NEW ORLEANS, THE DEPARTMENT OF SAFETY AND PERMITS OF THE CITY OF NEW ORLEANS

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI OR ALTERNATIVELY, SUMMARY REVERSAL

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65 pp

QUESTIONS PRESENTED

1. Does action by a zoning board in denying an owner the right to use his property in the same manner as all of the surrounding and similarly situated properties constitute arbitrary discrimination and a denial of equal protection of law?

2. Can a zoning board take property out of commerce by denying the owner any reasonable or economic use of his property without effecting a "taking" of the property in violation of the Fifth and Fourteenth Amendments to the United States Constitution?

STATEMENT OF INTERESTED PARTIES

The parties having an interest in the outcome of this case, pursuant to Rule 21.1(b) of the Rules of the Supreme Court, are listed as follows:

1. The City of New Orleans
2. The Board of Zoning Adjustments of the City of New Orleans
3. The Department of Safety and Permits of the City of New Orleans
4. Rebecca Montgomery, wife of/and Anthony A. Sanchez
5. The Garden District Association

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OR ALTERNATIVELY, SUMMARY REVERSAL

Plaintiffs, Rebecca Montgomery, wife of/and Anthony A. Sanchez, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Louisiana Court of Appeals for the Fourth Circuit entered in this proceeding on May 12, 1986.

OPINIONS BELOW

The denial of application for writ of certiorari by the Louisiana Supreme Court, reported at 491 So.2d 24, is reprinted in Appendix E.

The opinion of the Louisiana Court of Appeals for the Fourth Circuit, reported at 488 So.2d 1277, is reprinted in Appendix A.

The opinion of the Civil District Court for the Parish of Orleans, State of Louisiana, is reprinted in Appendix B.

Notice of Disposition of Zoning Case by the Board of Zoning Adjustments for the City of New Orleans is reprinted in Appendix C.

JURISDICTION

The judgment of the Louisiana Court of Appeals for the Fourth Circuit was entered on May 12, 1986. A timely application to the Louisiana Supreme Court for Writ of Certiorari was denied on July 1, 1986, and this petition for Writ of Certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 USC Section 1257 (3).

TEXT OF AUTHORITIES INVOLVED

UNITED STATES CONSTITUTION, Amendment V:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War, or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

UNITED STATES CONSTITUTION, Amendment XIV, §1:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof,

are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Comprehensive Zoning Ordinance for the City of New Orleans, No. 4264 MCS, Article 13, Section 11, Paragraph 1:

SECTION 11. Variances.

Consistent with and in accord with the provisions of Article 15, Section 2.3 of this Ordinance, the Board shall have the power to grant the following variances:

1. A variation in the yard, lot width, depth or frontage lot area per family, spacing of buildings, floor area ratio, open space ratio and parking requirements in any district so as to relieve practical difficulties or particular hardships in cases when and where, by reason of exceptional narrowness, shallowness, or shape of a specific property at the time of the enactment of such regulation or restriction or by reason of exceptional topographical conditions or other extraordinary and exceptional situations or conditions of such property, the strict application of such regulation or restriction would result in peculiar and exceptional practical hardship upon the owner of such property. Such grant or variance shall comply, as nearly as possible, in every respect with the spirit, intent, and purpose of this ordinance and the granting of a variation

shall be only for reasons of demonstrable and exceptional hardship as distinguished from variation sought by applicants for purposes or reasons of convenience, profit, or caprice.

Comprehensive Zoning Ordinance for the City of New Orleans, No. 4264 MCS, Article 15, Section 2.3, Paragraph 1:

2.3 Variances, the Board of Zoning Adjustments.

The purpose of the "Variance" provision permits an applicant to apply for relief from the requirements of the letter of the Ordinance when unnecessary hardship or practical difficulty exists. The Board of Zoning Adjustments shall authorize Variances in harmony with the general purpose and intent of this Ordinance, consistent and in accord with the provisions of Article 15, Section 11 of this Ordinance, and also in accordance with the standards and procedures hereafter prescribed:

1. Standards for Variances. The Board of Zoning Adjustments shall not authorize a Variance from the requirements of this Ordinance unless it shall make findings based upon the evidence presented to it that each special case shall indicate all of the following:

a. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.

b. Literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other

properties in the same district under the terms of this Ordinance.

c. The special conditions and circumstances do not result from the actions of the applicant or any other person who may have or had interest in the property.

d. Granting the Variance requested will not confer on the applicant any special privilege which is denied by this Ordinance to other lands, structures, or buildings in the same district or similarly situated.

e. The Variance, if granted, will not alter the essential character of the locality.

f. If the strict adherence to the regulation for the property would result in a demonstrable hardship upon the owner as distinguished from mere inconvenience.

g. The purpose of the Variance is not based exclusively upon a desire to serve the convenience or profit of the property owner or other interested party(s).

h. The granting of the Variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

i. The proposed Variance will not impair an adequate supply of light and air to adjacent property, or increase substantially the congestion in the public streets, or increase the danger of fire, or endanger the public safety.

All other authorities are case citations contained in the text of the Petition for Writs.

STATEMENT OF THE CASE

SECTION 1. FACTUAL STATEMENT

These proceedings commenced with the filing by plaintiffs of a request for variance from the requirements of the New Orleans Zoning Ordinance so as to allow them to erect a single family residence on a lot they purchased in the Garden District of the City of New Orleans on May 25, 1984. The variance was necessary for the reason that the lot did not meet the minimum width or area requirements of the zoning ordinance. The lot was a legal lot of record and had been since the turn of the century, prior to enactment of New Orleans' first zoning ordinance in 1927.

Plaintiffs originally appeared before the Board of Zoning Adjustments on July 9, 1984. After hearing arguments, the Board decided to table the matter until its next meeting for the purpose of viewing the site and determining the average front yard setback of plaintiff's property, because the New Orleans Zoning Ordinance only required a front yard setback equal to

the average front yard setback of other properties in the block. At the next meeting of the board, on August 13, 1984, no arguments were allowed; however, the Board summarily denied the request for a variance.

Following the denial, plaintiffs filed a timely civil proceeding seeking reversal of the decision of the Board of Zoning Adjustments, and on September 14, 1984, obtained judgment in their favor and against the defendant Board. Following judgment, the Board filed a motion seeking a new trial, but prior to the hearing on the motion for new trial, plaintiffs again appeared before the Board through legal counsel, at which time the Board of Zoning Adjustments admitted error and agreed to grant the variance. The granting of the variance was contained in a consent judgment entered into among the plaintiffs, the Board of Zoning Adjustments for the City of New Orleans, the Department of Safety and Permits of the City of New Orleans, and the City of New Orleans itself. The consent judgment is reprinted in Appendix F hereto.

Immediately prior to submission of the consent judgment for approval by the Court, the Garden District Association intervened into this matter and obtained an ex parte order staying all proceedings. Following a

conference among the Court and counsel for all parties, the matter was ultimately set for re-trial on December 7, 1984, and, following trial, judgment was rendered again in favor of the plaintiffs on December 11, 1984.

The trial judge reversed the decision of the Board of Zoning Adjustments, holding that plaintiffs had met every requirement of the Zoning Ordinance, and, as an alternative reason for judgment, that denial of the variance would be contrary to the United States Constitution in that it would deprive plaintiffs of all reasonable use of their property.

Intervenor, the Garden District Association, was the only party to appeal the decision of the trial court, which appeal was answered by plaintiffs. The Board of Zoning Adjustments, the Department of Safety and Permits, and the City of New Orleans neither appealed, nor answered the Association's appeal.[1]

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[1] It is noted that the intervention of the Garden District Association was its first appearance in this matter. No representative of the Association appeared and testified at either of the public hearings before the Board of Zoning Adjustments. The only opponents who testified at the hearings were Mr. and Mrs. Maumus Claverie. They reside across the street from the Sanchez

On appeal, the Louisiana Court of Appeals for the Fourth Circuit reversed the judgment of the trial court on the sole ground that plaintiffs did not meet one of the nine standards for the granting of a variance as provided by the New Orleans Zoning Ordinance. The Court of Appeals further held that no taking had occurred even though plaintiffs were left with no reasonable or economic use whatsoever of their property.

Plaintiffs timely applied to the Louisiana Supreme Court for a Writ of Certiorari. The application was denied on July 1, 1986.

SECTION 2. SPECIFICATION OF FEDERAL QUESTION PURSUANT TO SUPREME COURT RULE 21(h):

The federal questions sought to be reviewed by this Honorable Court were first raised in

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(Footnote 1 continued)
property and appeared to voice personal objections. These two opponents gave no real reasons for opposing plaintiffs' request: Mr. Claverie simply stated he did not "like the idea of too small a lot being allowed to have a building put on it;" Mrs. Claverie claimed plaintiffs' property had "always been a green space" and apparently wished it to remain so. (Official record--Transcript of Minutes from Board of Zoning Adjustments Meeting of July 9, 1984.)

plaintiff's petition which is reprinted in Appendix G. More specifically, Paragraph 7 of plaintiff's petition alleged the actions of the Board of Zoning Adjustments to be arbitrary, capricious, unreasonable, and in violation of the United States Constitution in that it deprived petitioners of due process and equal protection of the law, and deprived petitioners of any reasonable use of their property. These issues were passed upon by the trial court as explained in the foregoing statement of facts.

The federal questions were maintained and extensively briefed in the appeal before the Louisiana Court of Appeals for the Fourth Circuit. Plaintiffs' brief, which is part of the official record of this matter, specifically addressed alleged violations of the Fifth and Fourteenth Amendments to the United States Constitution in the context of the "taking" issue and the denial of equal protection with respect to arbitrary discrimination by the Board of Zoning Adjustments against the plaintiffs. The opinion of the Louisiana Court of Appeals for the Fourth Circuit failed to address the issue of denial of equal protection, and ruled that no taking had occurred.

In plaintiffs' application to the Louisiana Supreme Court for Writ of Certiorari, the federal questions of

lack of due process and denial of equal protection of law were again addressed in Specification of Errors, Nos. I and IV. Specification of Error No. I specifically alleged the Court of Appeals decision to be in error as contrary to holdings of this Honorable Court, while Specification of Error No. IV addressed the issue of denial of equal protection in connection with evidence adduced at trial as to the discriminatory treatment of plaintiffs. Assignment of Error No. IV also addressed the taking issue in connection with testimony as to the plaintiffs' property being taken out of commerce and rendered wholly useless. The Louisiana Supreme Court denied plaintiffs' application without comment.

REASONS RELIED ON FOR GRANTING THE WRIT

QUESTION 1 - ARBITRARY DISCRIMINATION AND DENIAL OF EQUAL PROTECTION OF LAW

The Louisiana Court of Appeals for the Fourth Circuit has decided this federal question in a way that conflicts with applicable decisions of this Court, and has departed from said decisions to such an extent that justice, fairness and stability of the law demand intervention by this Court.

In the landmark decision of Penn Central Transportation Company, et al v. New York City, et al, 438 U.S. 104 (1978), this Court responded to arguments that a New York law was discriminatory. In upholding the New York law, the Court distinguished it from "reverse spot zoning" which was defined as "a land-use decision which arbitrarily singles out a particular parcel for different, less favorable treatment than the neighboring ones." Penn Central, 438 U.S., at 132 (citations omitted). The Court referred to such "reverse spot" zoning as discriminatory and "the antithesis of land-use control as part of some comprehensive plan... ." Id.

The instant case presents a grievous example of "reverse spot" zoning. The relevant facts follow. First, the property owned by plaintiffs has been a separate and legal lot of record since the turn of the century, existing long before enactment of the first Comprehensive Zoning Ordinance for the City of New Orleans (1927). Second, at the time of the Board's decision, plaintiff's property was zoned RD-2, a district classification enacted with the specific purpose of providing for improvements on smaller lots, as generally exist in older more densely populated sections of the City, including the Garden District.

Third, examination of trial exhibits III and IV (reproduced in Appendix H) shows graphically the purposeful and arbitrary discrimination evident in the Board's action.[2] That is, these exhibits demonstrate that every single lot adjacent to the plaintiff's property is also substandard in size, as are most of the lots in the immediate neighborhood. Many of these lots are even more severely substandard than the plaintiffs' lot so much so that plaintiffs' property is the "norm" rather than the "exception" for the neighborhood. Not one of the owners of substandard lots either adjacent to, or in the vicinity of, the plaintiffs' property has ever been deprived of his right to use his property. Every one of these lots is developed with single, double and even multi-family uses.

Despite all of the above, the Board of Zoning Adjustments singled the plaintiffs' property for

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2 The exhibits were accepted into evidence by the trial court and are part of the Official Record. Exhibit III compares the width of plaintiffs' property (labelled "Subject Property") to the widths of surrounding substandard properties. Exhibit IV indicates the nature of improvements on the surrounding substandard properties. Plaintiffs note that the four parcels immediately adjacent, and on the Sixth Street side of their property, are only one-half as large, yet all are improved with single or two-family residences. Few of the surrounding parcels are as wide as plaintiffs'.

"different, less favorable treatment than neighboring ones." Penn Central, 438 U.S., at 132. The denial of plaintiffs' request for variance prohibits not only construction of a single family home, but also construction of anything else. Thus, plaintiffs are not only denied the most beneficial use of their property, but are denied all reasonable use since nothing can now be built upon the property.

Such discrimination is arbitrary, unreasonable, and bears no rational relationship to any legitimate governmental objective. Indeed, the statutory purpose of providing for variances is precisely to provide relief to persons, such as plaintiffs, whose property suffers a hardship over which they have no control, i.e., substandard size. The great power vested in the Board of Zoning Adjustments should not be used as a tool to achieve the opposite objective—excluding plaintiffs from the neighborhood.

This is particularly evident from the testimony of Paul May, the Zoning Administrator for the New Orleans Department of Safety and Permits and the liason person between the department and the Board of Zoning Adjustments. Mr. May, an expert in the field of zoning, testified that in his opinion (i) the plaintiffs' request was merited; (ii) the plaintiffs' property was

compatible with adjacent properties in the vicinity; and (iii) the plaintiffs were not seeking any more rights than were already enjoyed by other property owners in the neighborhood. (Official record, Trial Transcript, Page 20-21.) Finally, even the Board, on its own, recognized the arbitrary nature of its initial action by entering into a consent judgment with plaintiffs, specifically acknowledging that plaintiffs were entitled to the requested variance.

QUESTION 2 - THE "TAKING" ISSUE

The trial judge relied on the United States Supreme Court decision in Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978) when he held the plaintiffs met every requirement for the granting of a variance, and even if they did not, "then the requirements would have to fall as unconstitutional in light of that Penn case." The trial judge thereby acknowledged that plaintiffs proved their property had no value on the open market and was effectively out of commerce without the variance.

The Penn Central decision is one of a series of opinions of this Court that address the "taking issue", an issue concerning the constitutional limits

of governmental authority to regulate the use of private property without payment of just compensation. The issue is considered to have commenced with the test enunciated by Justice Oliver Wendell Holmes in Pennsylvania Coal v. Mahon, 260 U.S. 393 (1922):

> "The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." Id., at 415.

The taking issue has caused much difficulty for this Court since the Pennsylvania Coal decision. The most recently reported decision, Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984), noted that the United States Supreme Court "'has generally "been unable to develop any 'set formula' for determining when 'justice and fairness' require that economic injuries caused by public action must be deemed a compensable taking. ... The inquiry into whether a taking has occurred is essentially an 'ad hoc, factual' inquiry." Ruckelshaus, 467 U.S., at 1005 (citing Goldblatt v. Hempstead, 369 U.S. 590, 594(1962); accord, Hodel v. Virginia Surface Mining & Reclamation Association, Inc., 452 U.S. 264, 295(1981); Kaiser Aetna v. United States, 444 U.S. 164, 175(1979), quoting Penn Central, 438 U.S., at 124); Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426(1982).

While this Court has mandated that "taking issue" analyses proceed on an ad hoc and factual basis, "the inquiry is not standardless. The economic impact of the regulation, especially the degree of interference with investment-back expectation, is of particular significance." Kaiser Aetna, 444 U.S., at 175; Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426 (1981). Accord., Penn Central, 438 U.S., at 124; PruneYard Shopping Center v. Robins, 447 U.S. 74, 83.

The case at bar presents the highest degree of economic impact—that of denying plaintiffs all reasonable and economic use of their property. This is not a case in which plaintiffs are denied only the most beneficial use of their land. Admittedly, such a restriction is within the constitutional limits of the police power . Penn Central, 438 U.S., at 125; Goldblatt, 369 U.S., at 592.

To the contrary, plaintiffs' factual situation presents to the Court the question noted, but unresolved by Penn Central. Specifically, plaintiffs cannot use their property in any "gainful fashion"; their property has ceased to "economically viable." Penn Central, 438 U.S., at 138 n. 36.

The Court, in Kirby Forest Industries, Inc. v. United States, 467 U.S. 1 (1983), acknowledged that such "a radical curtailment of a landowner's freedom to make use of...his land" would effect a taking. Kirby, 467 U.S., at 14 (citing Agins v. Tiburon, 447 U.S. 255, 260 (1980)). Although the market value of petitioners' property was impaired in Kirby, the Court found no taking because petitioner's right to sell its property was not abrogated. Kirby, 467 U.S., at 15. The Kirby Court pretermitted the question of whether diminution of value, combined with abrogation of right to sell, "would give rise [to] a taking." Kirby, 467 U.S., at 15 n. 25. Plaintiffs suggest this question is ripe for determination in the instant case. Evidence at Trial proved that the market value of plaintiffs' property has not been merely diminished, but eliminated. This, in itself, abrogates their right to sell. Andre Montz, plaintiffs' expert appraiser, testified that without a variance, plaintiffs' property "would effectively be taken out of commerce, because I can't conceive of anyone wanting to buy a piece of land that they couldn't, you know, couldn't develop." (Official Record—Trial Transcript, p. 10.) Furthermore, unlike petitioner in Kirby, plaintiffs have no present right to use their property and cannot "precipitate an immediate taking" by attempting to use their property. Kirby, 467 U.S. at 16.

Plaintiffs stress that they do not seek a declaration by the Court that the New Orleans Zoning Ordinances, and procedures for obtaining a variance therein, are invalid. They seek only to have the specific application of the law in this case declared invalid. As such, plaintiffs' case follows the dictates of Hodel v. Virginia Surface Mining & Reclamation Association, 452 U.S. 264, 294 (1980), and presents to the Court "an actual factual setting that makes such a decision necessary." Hodel, 452 U.S., at 295 (citing Socialist Labor Party v. Gilligan, 406 U.S. 583, 588 (1972); Rescue Army v. Municipal Court, 331 U.S. 549, 568-575, 584 (1947); Alabama State Federation of Labor v. McAdory, 325 U.S. 450, 461 (1945)). The "ad hoc, factual" inquiry mandated by the Court will "be conducted with respect to specific property, and the particular estimates of economic impact and ultimate valuation relevant in the unique circumstances." Hodel, 452 U.S., at 295.

The Louisiana Court of Appeals for the Fourth Circuit ignored controlling decisions of this Court, relying instead on a statement by Professor Robert Anderson in his treatise, American Law of Zoning, 2d ed., Vol. 3, §18.42. Plaintiffs submit the Fourth Circuit took this statement out of context. The "zoning restrictions" referred to by Professor Anderson are "use

classifications" such as residential, commercial, etc. All the statement means is that an owner cannot complain about his property's zoning classification if he purchased the property with knowledge of it. In simple terms, if a person buys property zoned residential, he cannot claim hardship simply because the classification does not permit him to use the property commercially. Clouser v. David, 309 F.2d 233, 234; 112 U.S. App. D.C. 12, cert. denied 372 U.S. 929 (1962). Furthermore, all zoning classifications permit some reasonable uses, even if the most beneficial use is prohibited. Thus, regardless of how a person's property is classified, he is never denied all use, as have been the plaintiffs.

Variances are, by definition, exceptions to applicable zoning classification. Thus, the statement of Professor Anderson cited by the Fourth Circuit does not apply. The purpose of the variance under the New Orleans Zoning Ordinance is to provide relief from zoning requirements in cases where "unnecessary hardship or practical difficulty exists." Comprehensive Zoning Ordinance, City of New Orleans, Art. 15 §2.3. Professor Anderson is actually in complete accord with plaintiffs:

> "The clearest case of hardship due to the literal application of zoning regulations is that of the substandard lot which cannot be

> used for any purpose without relief from the restrictions. Whether the standard is practical difficulties or unnecessary hardship, the applicant for a variance can satisfy it in a case of this kind. If the zoning regulations as applied to the land in issue result in sterilization of the land, there is a taking without due process of law. Not only may a Board of Zoning Appeals grant an area variance to relieve the applicant, but it is required to do so." [Emphasis added.] Anderson, supra, Section 18.54 [citations omitted.]

The Louisiana Fourth Circuit misconstrued Professor Anderson by holding that simply because plaintiffs were aware of the need for a variance at the time of their purchase, they somehow created their own hardship.

The holding is in error. The gist of the error is found in the following paragraph of the Fourth Circuit opinion:

> Appellee, Anthony Sanchez testified at the district court level, that he knew before he bought the property that a variance would be required. Appellees were well aware that absent a variance the applicable zoning regulations would prevent them from constructing a residence. In our opinion appellees placed themselves in this predicament by choosing to ignore the zoning regulations, that choice resulted in the "special circumstances" (a substandard size lot) upon which they now base their claim to

> a variance. Under these circumstances we do not think appellees were entitled to a variance.

This paragraph defies reason; it is illogical and erroneous. The Court's opinion is premised on the single fact that plaintiffs purchased their property knowing a variance was necessary. The fact is true, but irrelevant. A request for a variance based upon substandard lot size is a proceeding quasi in rem. The question is whether the property suffers a hardship, not whether the owner knows it does.[3] The owner's knowledge is only relevant if he personally has a hand in creating the hardship.

Nevertheless, the Fourth Circuit concluded, from this premise, that (i) plaintiffs chose to ignore the

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[3]The Fourth Circuit has confused a request for change in zoning classification with a request for a variance. Zoning classifications dictate what uses are permitted an owner. A request for change in zoning classification is based on the owners' desire to use his property in a way not permitted under his existing classification. The law does not deny him any of the uses permitted under his existing classification, rather, it is the owner who is not satisfied with the permitted uses. The owner is seeking something special—the right to use his property differently than other properties in his zoning district. Variances are different. The owner is not asking for anything special. He is only asking to be allowed to use his property in the same manner as all the other properties in his zoning district. His request is based

zoning regulations; (ii) their choice resulted in special circumstances—a substandard sized lot; and therefore, plaintiffs did not meet Standard for Variance 1c, which requires that:

> "The special conditions and circumstances [for which the variance is requested] do not result from the actions of the applicant... ." New Orleans Zoning Ordinance, Art. 15, §2.3, Paragraph 1c.

The errors are multiple and manifest. First, plaintiffs did not choose to ignore the zoning regulations. They followed the regulations precisely by aplying for a variance, and exhausted all administrative remedies in their attempts to obtain one. Had they proceeded with construction without requesting a variance, then, and only then, would plaintiffs have personally violated the zoning ordinance. The Fourth Circuit confused creating a hardship with being aware of one.

(Footnote 3 continued)
on hardship due to the irregular or substandard size of his property—not his desire to use the property in a prohibited manner. This distinction is particularly relevant in the instant case, for plaintiffs have no "permitted uses" to fall back on without a variance. The decision as to the variance is, a priori, a decision as to whether the plaintiffs can use their property at all.

Second, the "special circumstances," a substandard sized lot, resulted in no way from any action of plaintiffs. This particular lot was created at the turn of the century—long before adoption of the original New Orleans Zoning Ordinance—and it has been maintained as a separate, legal lot of record ever since.[4] To hold plaintiffs responsible in any way for its size is incomprehensible.

CONCLUSION

Plaintiffs have been denied a variance to construct a single family home on their property for their own use. The variance was required because their lot was substandard in size. Granting the variance would have no adverse effect on neighboring properties for every single property surrounding the plaintiffs', and a majority of those in the immediate vicinity, are also substandard in size—even more so than plaintiffs'—yet not one of these other owners has been denied use of his property; all are developed with single, double and even multi-family uses. The singling out of the Sanchez property

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[4] Had plaintiffs, for example, created this substandard lot by subdividing a larger lot, they would have no cause to complain. The substandard lot would then constitute a self-created hardship. Such is not the case here, however. Testimony at trial showed this lot, Lot 21, to have existed as a separate lot of record since at least 1913. (Official Record - Trial Transcript, Page 57.)

for different, less favorable treatment than all of the neighboring properties constitutes gross and arbitrary discrimination and an unduly oppressive interference with plaintiffs' rights unjustified by any legitimate governmental objective.

The denial of the variance prohibits not only construction of a single family home, but prohibits any construction whatsoever. As a result, plaintiffs are effectively precluded from using their property in any reasonable or economic manner. The prohibition of all reasonable use has sterilized plaintiffs' property by taking it out of commerce and rendering it unmarketable. The property no longer has any economic value.

Plaintiffs urge this Honorable Court to reverse the judgment of the Louisiana Fourth Circuit Court of Appeals in the interests of "justice and fairness," and to recognize the denial of their request for a variance as an invalid exercise of the police power, one which has exceeded the constitutional limits of governmental authority to regulate private property and one which constitutes a violation of equal protection, a violation of substantive due process and a "taking" of plaintiff's property in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

For these reasons, Writs of Certiorari should be granted. In the alternative, plaintiffs pray for summary reversal of the Louisiana Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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APPENDIX A

I. Opinion of Louisiana Court of Appeals for the Fourth Circuit, reported at 488 So.2d 1277.

Facts:

On February 15, 1984 Thomas Jahncke purchased a house located on three lots (part of 20, and lots B and 21) on Coliseum Street in Uptown New Orleans. Lot 21 constituted the side yard of the house. On May 25, 1984 Mr. Jahncke sold lot 21 to plaintiff Anthony A. Sanchez and his wife Rebecca Montgomery. Mr. Sanchez and Ms. Montgomery intended to build a single family dwelling for their own use on lot 21. Because their lot was smaller than that required by the zoning ordinances plaintiffs requested a variance from the Board of Zoning Adjustments ("Board"). The Board denied the variance. Plaintiffs appealed to New Orleans Civil District Court and the Garden District Association intervened. Prior to the hearing in Civil District Court plaintiffs entered into a consent judgment with the Board granting plaintiffs certain variances, allowing them to build the house. However, as the Garden District Association was still interested in preventing plaintiffs from building, a hearing was held on December 7, 1984. At the hearing all parties agreed to limit the hearing to a review of the Board's original denial of a variance to plaintiffs and ignore the consent judgment. After the hearing the trial court reversed the decision of the Board and granted plaintiffs the variance. In its reasons for judgment the trial court stated, "I think the conditions here met each and every one of the requirements [for a variance] . . . . When you acquire then you have the right of use and any zoning ordiance that would totally prevent your right of use would have to be unconstitutional . . . ."

APPENDIX A

Intervenor, the Garden District Association, appeals from that decision.

Appellant argues that the trial court could not reverse the Board's decision absent a finding that the Board acted arbitrarily or capriciously, or that it abused its discretion. *Gertler v. City of New Orleans,* 346 So.2d 228 (La. 4th Cir. 1977), writ denied 349 So.2d 885 (La. 1977), cert. denied 434 U.S. 1068, 98 S.Ct. 1248, 55 L.Ed. 2d 770 (1978). *Coliseum Square Association v. The Board of Zoning Adjustments of the City of New Orleans,* 374 So.2d 177 (La. App. 4th Cir. 1989).

Appellant correctly contends that in order to reverse the Board's finding the district court must find that the Board acted arbitrarily or capriciously, or abused its discretion. It is not necessary however that the trial court state such a finding in those exact words. Although the court did not specifically state that the Board abused its discretion, in determining that the plaintiff met all of the requirements for a variance, that conclusion was certainly implicit in the trial court's statement.

Thus, we must determine whether the trial court was correct in its determination that the Board abused its discretion in denying the variance.

> [A] trial court must afford a presumption of regularity to the decisions of the Board of Zoning Adjustments. While this presumption is rebuttable, a reviewing court simply substitutes its own judgment for that of the zoning board or other property

> constituted administrative agency. A reviewing court must first determine whether the decision of the Board is supported by substantial and competent evidence. This court will not substitute its judgment for that of administrative tribunals in the absence of a showing by the complaining party that the administrative tribunal was arbitrary and capricious or that it abused its discretion.

State ex rel. Maple area Residents, Inc. v. Board of Zoning Adjustments, 365 So.2d 891, 893 (La. App. 4th Cir. 1978) (Footnotes omitted).

Art. 15 §2.3 of the Comprehensive Zoning Ordiance for City of New Orleans, provides as follows:

> The purpose of the "Variance" provision permits an applicant to apply for relief from the requirements of the letter of the Ordinance when unnecessary hardship or practical difficulty exists. The Board of Zoning Adjustments shall authorize Variances in harmony with the general purpose and intent of this Ordiance, consistent and in accord with the provisions of Article 13, Section 11 of this Ordinance, and also in accordance with the standards and procedures hereafter prescribed:
>
> 1. *Standards for Variance.* The Board of Zoning Adjustments shall not authorize a Variance from the requirements of this Ordinance unless it shall make findings based upon the evidence presented to it that each special case shall indicate all of the following:

a. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.

b. Literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.

c. The special conditions and circumstances do not result from the actions of the applicant or any other person who may have or had interest in the property.

d. Granting the Variance requested will not confer on the applicant any special privilege which is denied by this Ordinance to other lands, structures, or buildings in the same district or similarly situated.

e. The Variance, if granted, will not alter the essential character of the locality.

f. If the strict adherence to the regulation for the property would result in a demonstrable hardship upon the owner as distinguished from mere inconveniences.

g. The purpose of the Variance is not based exclusively upon a desire to serve the convenience or profit of the property owner or other interested party(s).

h. The granting of the Variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

i. The proposed Variance will not impair an adequate supply of light and air to adjacent property, or increase substantially the congestion in the public streets, or increase the danger of fire, or endanger the public safety.

Appellant argues that several of the above criteria (specifically a,c,h, and i) have not been met and therefore that the Board correctly denied appellee's application for a variance. We agree with appellant that appellees do not meet standard (c). Standard (c) requires that "[t]he special conditions and circumstances do not result from the actions of the applicant or any person who may have or had interest in the property."

A person who purchases land with knowledge, actual or constructive, of the zoning restrictions which are in effect at the time of such purchase, is said to have created for himself whatever hardship such restrictions entail." Anderson, *American Law of Zoning*, 2d Edition, Volume 3, §18.42. *Abel v. Zoning Bd. of Appeal of City of Norwalk*, 374 A.2d 227 (Conn. 1977); *Goslin v. Zoning Bd. of Appeals of Park Ridge*, 351 N.E. 2d 299 (Ill. App. 1976). See

Glickman v. Parish of Jefferson, 224 So.2d 141 (La. App. 4th Cir. 1969).

Appellee, Anthony Sanchez testified at the district court level, that he knew before he bought the property that a variance would be required. Appellees were well aware that absent a variance the applicable zoning regulations would prevent them from constructing a residence. In our opinion appellees placed themselves in this predicament by choosing to ignore the zoning regulations, that choice resulted in the "special circumstances" (a substandard size lot) upon which they now base their claim to a variance. Under these circumstances we do not think appellees were entitled to a variance.

In response, appellees contend that the denial of a varianace constitutes an impermissible "taking." We must disagree with that contention. The cases cited by appellees in support of that contention involve instances where the property was purchased prior to the passage of the regulation which prevented or limited the use of the subject property.[1] This factual difference highlights the primary problem with appellees' argument i.e., the contention that there was a "taking." The City did not in any form or fashion "take" appellees' property. Appellees were completely cognizant of the ordinance governing the required lot area. The appellees "took" a chance on obtaining a variance and they lost.

---

[1] *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646 (1978); *Goldblatt v. Town of Hemstead*, 369 U.S. 590, 82 S.Ct. 987 (1962); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S.Ct. 158 (1922).

For the foregoing reasons the judgment of the trial court is reversed and the decision of the Board of Zoning Adjustments denying plaintiff's request for a variance from the Comprehensive zoning Ordinance is reinstated. All court costs are taxed against plaintiffs.

REVERSED

REHEARING NOT APPLIED FOR

A TRUE COPY
JULY 3, 1986

APPENDIX B

II. Opinion of Civil District Court for the Parish of Orleans, State of Louisiana

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

REBECCA MONTGOMERY, WIFE
of/and ANTHONY A. SANCHEZ — No. 84-14529

vs — DIVISION "E"

THE BOARD OF ZONING
ADJUSTMENTS OF THE CITY OF
NEW ORLEANS, ET AL

Statements made by the Honorable Gerald P. Fedoroff, Judge presiding Division "E", after hearing arguments by counsel, on the 7th day of December, 1984.

APPEARANCES:

REGEL L. BISSO, ESQ.
For the Plaintiffs

MICHAEL J. LAUGHLIN, ESQ.
AND
OKLA JONES, ESQ.
For the City of New Orleans

BROD BAGERT, ESQ.
For Board of Zoning Adjustments

MARC G. SHACHAT, ESQ.
For Garden District Assn.

REPORTED BY:
GEORGE E. HAYES
OFFICIAL COURT REPORTER

THE COURT:

The motion will be denied. I think the conditions here met each and every one of the requirements and if they didn't then the requirements would have to fail as unconstitutional in light of that *Penn Case.* But I think they met all the requirements.

Mr. Jahncke. The difference being Jahncke may have been denied the variance and for a very good reason, because he had use for the property as a side yard, but when the thing is a lot of record I am told that it is bound to recognize the validity of subsequent transfers.

When you acquire then you have the right of use and any zoning ordinance that would totally prevent your right of use would have to be unconstitutional. Aside from all that this variance should have been granted because it meets all the requirements, in spades, I may add.

* * * *

CERTIFICATE

I, George E. Hayes, an Official Court Reporter in and for the State of Louisiana, do hereby certify that the preceding transcript is a true and correct copy of the statements made in the preceding matter on the 7th day of December, 1984.

/s/ George E. Hayes

George E. Hayes
Official Court Reporter

APPENDIX C

CITY OF NEW ORLEANS
DEPARTMENT OF SAFETY & PERMITS
BOARD OF ZONING ADJUSTMENTS
ROOM 7EO4 — CITY HALL
NEW ORLEANS, LA. 70112

AUGUST 21 1984

NOTICE OF DEPOSITION OF ZONING CASE

Filed
August 23, 1984

RE: DOCKET # 253-84
APPLICANT'S NAME: John Bohlke
ADDRESS: 2909 Coliseum Street
LOT(S) 21 SQ. 195

Whereas the above appeal was heard by the Board of Zoning Adjustments at its public meeting which was held on AUGUST 13, 1984.

Whereas John Bohlke appeared representing the applicant in seeking relief from the Comprehensive Zoning Ordinance # 4264, M.C.S., as amended, specifically as it applies to Article(s) 5 Section(s) 1.

Proposed to erect a single family residence in lieu of insufficient lot width required 40', provided 32', waiver of 8'. Lot area required 4400 sq. feet, provided 3840 sq. feet, waiver of 560 sq. feet. To be allowed to park in the required front yard. Front yard setback required 20', provided 8', waiver of 12 feet.

RD-2 TWO FAMILY RESIDENTIAL DISTRICT

Whereas the Board carefully considered the facts, the argument for and against the applicant and after considering the Comprehensive Zoning Ordinance #4264, M.C.S., as amended, the Board is of the opinion that the evidence of testimony of the public hearing indicates that in this special case all of the Standards for Variances of Article 15, 2.3, pages 155, 156 have not been met and therefore for that reason it is resolved that the applicant is hereby denied from the Comprehensive Zoning Ordinance #4264 M.C.S., as amended specifically as herein above stated.

And further that the decision of the Director of Safety & Permits be UPHELD and the permit DENIED.

Voting for the Resolution:

William Katz
Bonnie Warren
Daisy Mason
Paul Adams

Voting against the Resolution:

Barry Smith

Absent or Recused:

By: William Katz, Chairman
Board of Zoning Adjustments

APPENDIX D

Rebecca Montgomery, Wife of/and
Anthony A. Sanchez

CA-3697
Court of Appeal

VERSUS

Fourth Circuit

The Board of Zoning Adjustments
of the City of New Orleans,
The Department of Safety and
Permits of The City of New Orleans,
and The City of New Orleans

State of Louisiana

An Appeal From
The Civil District Court
For the Parish of Orleans
Honorable Gerald P. Fedoroff, Judge

Joan Bernard Armstrong
Judge

(Court composed of Judges Patrick M. Schott, Dennis A. Barry, and Joan Bernard Armstrong)

HULSE, NELSON & WANEK
Regel L. Bisso
610 Baronne Street
New Orleans, Louisiana 70113
(Attorneys for Plaintiffs-Appellees)

CHAFFE, McCALL, PHILLIPS, TOLER & SARPY
Marc G. Shachat
James P. Farewell
1500 First N.B.C. Building
New Orleans, Louisiana 70112
(Attorneys for Defendants-Appellants)

REVERSED
MAY 12 1986

APPENDIX E

The Supreme Court of the State of Louisiana

REBECCA MONTGOMERY, WIFE OF/AND
ANTHONY A. SANCHEZ

VS. No.86-C - 1122

THE BOARD OF ZONING ADJUSTMNETS
OF THE CITY OF NEW ORLEANS, THE
DEPARTMENT OF SAFETY AND PERMITS OF THE
CITY OF NEW ORLEANS, AND THE CITY OF NEW
ORLEANS

IN RE: Montgomery, Rebecca; Sanchez, Anthony A.; Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fourth Circuit, Number CA-3697; Parish of Orleans Civil District Court Div. "E" Number 84-14529

July 1, 1986
Denied.

HTL
JAD
PFC
WFM
JLD
JCW
LFC

Supreme Court of Louisiana
July 1, 1986
/s/ illegible

Clerk of Court
For the Court

APPENDIX F

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS
STATE OF LOUISIANA

NO.84-14529 DIVISION E DOCKET NO.

REBECCA MONTGOMERY, wife of/and
ANTHONY A SANCHEZ
VERSUS
THE BOARD OF ZONING ADJUSTMENTS OF
THE CITY OF NEW ORLEANS
THE DEPARTMENT OF SAFETH AND PERMITS
OF THE CITY OF NEW ORLEANS,
and THE CITY OF NEW ORLEANS

FILED:_____ _____
DEPUTY CLERK

CONSENT JUDGMENT

Now come Plaintiffs, Rebecca Montgomery, wife of/and Anthony A. Sanchez, and Defendants, The Board of Zoning Adjustments of the City of New Orleans, and the City of New Orleans, and the City of New Orleans, who hereby consent to the entry of judgment herein on the following terms and conditions:

1. The parties hereto acknowledge the following facts:

a. Plaintiffs herein requested a variance from the requirements of the Comprehensive Zoning Ordinance for the City of New Orleans, which said request was denied by the Board of Zoning Adjustments at its meeting held August 13, 1984.

b. Subsequent to the denial, plaintiffs filed suit in Civil District Court for the Parish of Orleans, in Proceeding No. 84-14529, seeking a reversal of the decision of the Board of Zoning Adjustments.

c. On September 14, 1984 judgment was obtained in favor of plaintiffs and against defendants reversing the decision of the Board of Zoning Adjustments and granting petitioners relief from the Comprehensive Zoning Ordinance as provided in the judgment, a copy of which is attached hereto and made a part hereof.

d. Subsequent to the obtaining of judgment reversing the decision of the Board of Zoning Adjustments, defendants filed a motion seeking a new trial of the matter.

e. Prior to the hearing on defendant's motion for new trial, plaintiffs appeared before the Board of Zoning Adjustments, through legal counsel at the Board's meeting held October 8, 1984, at which time the Board of Zoning Adjustments and plaintiffs agreed to resolve all issues pursuant to the terms and conditions contained herein.

2. Accordingly, plaintiffs agree to have the judgment dated September 14, 1984, which judgment reversed the decision of the Board of Zoning Adjustments, vacated and declared null and void, and this consent judgment substituted in lieu thereof.

3. In connection thereof, defendants agree to waive their motion for a new trial of the matter and any appeals of the judgment obtained September 14, 1984.

4. Defendants further agree and acknowledge that plaintiffs are entitled to and are granted a variance from the Comprehensive Zoning Ordinance, No. 4264, MCS, amended, said variance specifically granting relief to plaintiffs for the insufficient lot area of Lot 21, situated in the 4th District of the City of New Orleans, in Square No. 195, which lot bears original municipal numbers 2909-11 Coliseum Street, New Orleans, Louisiana. Defendants further acknowledge that plaintiffs are entitled to the average front yard setback of eight feet in lieu of the required twenty feet.

5. In accordance with the variance described herein and granted by the Board at its meeting held October 8, 1984, all parties acknowledge and agree that plaintiffs are entitled to the issuance of a building permit for a single family residence to be constructed on the hereindescribed property.

New Orleans, Louisiana, this 7th day of November, 1984.

/s/ Rebecca Montgomery Sanchez

REBECCA MONTGOMERY SANCHEZ

/s/ Anthony A. Sanchez

ANTHONY A. SANCHEZ

THE BOARD OF ZONING ADJUSTMNETS OF THE CITY OF NEW ORLEANS

BY:/s/ illegible

THE DEPARTMENT OF SAFETY
AND PERMITS
OF THE CITY OF NEW
ORLEANS

BY: /s/ Paul May

THE CITY OF NEW ORLEANS

BY: /s/ illegible

ORDER

Based upon the above and foregoing consent judgment, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The original judgment dated September 14, 1984 reversing the decision of the Board of Zoning Adjustments of the City of New Orleans is hereby vacated, recalled and declared null and void; and

2. The foregoing consent judgment mutually entered into and agreed to among the parties is hereby substituted in lieu of said original judgment according to the terms and conditions as stipulated in said consent judgment.

New Orleans, Louisiana, this ____ day of November, 1984.

JUDGE

APPENDIX G

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

STATE OF LOUISISNA

NO. · DIVISION DOCKET NO.

REBECCA MONTGOMERY, wife of/and
ANTHONY A. SANCHEZ

VERSUS

THE BOARD OF ZONING ADJUSTMENTS OF
THE CITY OF NEW ORLEANS,
THE DEPARTMENT OF SAFETY AND PERMITS
OF THE CITY OF NEW ORLEANS,
and THE CITY OF NEW ORLEANS

FILED: _____ _____
DEPUTY CLERK

PETITION

The petition of Rebecca Montgomery, wife of/and Anthony A. Sanchez respectfully represents that:

1.

Petitioners are the owners of immovable property located within the City of New Orleans, being more particularly described as follows, to-wit:

ONE CERTAIN LOT OF GROUND, together with all the buildings and improvements thereon, and all of the

rights, ways, privileges, servitudes, appurtenances and advantages the prescriptions (both liberative and acquisitive) thereunto belonging or in anywise appertaining, situated in the 4th District of the City of New Orleans, State of Louisiana, in that part known as SQUARE NO. 195, which said square is bounded by Sixth, Seventh, Coliseum and Prytania Streets, which lot is more particularly described as follows, to-wit:

LOT 21 commences at a distance of 63'5" " ' actual (62'6"0" ' title) from the intersection of Sixth Street and Coliseum Street; thence running 32'0"0" ' actual (31'3"0" ' title) front on Coliseum Street by the same width in the rear by a depth between equal and parallel lines of 120'0"0" ', all in accordance with the plan of survey by Gilbert, Kelly & Couturie, Inc., dated February 13, 1984, a copy of which is annexed hereto.

Lot 21 bears the original Municipal Nos. 2909-11 Coliseum Street.

2.

Petitioners are "parties aggrieved" within the meaning of Article 15, Section 2.3, Paragraph 7 of the Comprehensive Zoning Ordinance for the City of New Orleans (hereinafter the "Ordinance") and Louisiana Revised Statutes 33:4727; and their rights to due process and equal protection of the laws, accorded by the United States and Louisiana Constitution, have been infringed, all as will appear hereafter.

3.

In the summer of 1984, John Bohlke, representative of petitioners, applied to the Director of Safety and Permits for a building permit to permit construction of a single family residential home on the aforedescribed property located at 2909 Coliseum Street, New Orleans, Louisiana. The application for a building permit was rejected for the reason that the lot area and dimensions did not meet the minimum requirements of Article 5, Table 1 of the ordinance.

4.

Petitioners filed an appeal of the rejection of its application for a building permit with the Board of Zoning Adjustments of the City of New Orleans (hereinafter the "Board") seeking a variance from the minumum lot area requirements of the ordinance.

5.

On July 9, 1984, the Board considered the variance request at its public meeting. Petitioner's representative presented a statement to the Board in favor of the variance request; a neighborhood resident presented a statement in opposition to the request. The Board then decided to table the matter until its nest meeting. At the meeting of the board held on August 13, 1984, the Board denied the variance request.

6.

The Board's proceedings at the July 9 and August 13 meetings were electronically recorded. These recordings are in the custody of the Board and have not yet been transcribed.

7.

The action of the Board in denying the request for a variance was arbitrary, capricious, unreasonable, illegal, and constituted error for the following reasons:

a. The denial of the variance was beyond the power, authority and jurisdiction of the Board in that petitioners met all of the standards for variances required by Article 15 of the ordinance, and petitioners showed practical difficulty and particular hardship on their part in carrying out the provisions of the zoning ordinance due to exceptional narrowness and area of their property, which difficulty and hardship existed at the time of the enactment of the ordinance;

b. There was no credible evidence presented to the Board upon which to base its decision which was filed in the official record of the Board on August 23, 1984;

c. The Board failed in its duty to follow its "general standards and guidelines" and to give specific reasons for the decision of the Board, as required by the ordinance and Louisiana Revised Statutes 33:4727.

d. The Board clearly abused its discretion, and acted with gross negligence and in bad faith in denying the variance for the following reasons, to-wit:

1. At the initial meeting of the Board on July 9, 1984, various members of the Board indicated the variance would be granted, and the matter was tabled solely for the purpose of determining the average front yard setback in the neighborhood;

2. At the second meeting on August 13, 1984 the Board reversed its position and denied the variance with no reasons being given other than the fact that the Board "would not act as a tool for developers";

3. The change in the Board's decisions, and the denial of the request for variance was based solely upon complaints of neighborhood residents, and completely neglected the demonstrated difficulties and hardships suffered by petitioners;

e. The decision of the Board violates both the United States Constitution and the Louisiana Constitution in that it deprives petitioners of due process and equal protection of the law by prohibiting the issuance of any building permit whatsoever for the property, thus depriving petitioners of any reasonable use of the property.

8.

In order to protect petitioner's rights and interests herein, it is necessary that this court reverse the decision of the Board and compel the Department of Safety and Permits to issue a building permit to petitioners for construction of a single family dwelling.

WHEREFORE, petitioners pray:

I.

That a writ of certiorari issue herein directed to the Board of Zoning Adjustments of the City of New Orleans, through its chairman, William Katz, ordering the Board to send forthwith to this honorable Court the entire record in this matter (Docket No. 253-84); and

II.

That a copy of this petition be served on the Board of Zoning Adjustments for the City of New Orleans, through its chairman, William Katz, and on the Department of Safety and Permits, through its director, Evelyn Pugh, and the City of New Orleans, through the mayor, the Honorable Ernest Morial, and that all of said defendants be cited to appear and answer this petition, and that after due proceedings had there be judgment in favor of petitioners, setting aside the decision of the board and the Department of Safety and Permits, and ordering issuance of a building permit for the construction of a single family dwelling on the property belonging to petitioners.

/s/ Regel L. Bisso

REGEL L. BISSO
HULSE, NELSON & WANEK
Attorney for Petitioners
610 Baronne Street
New Orleans, Louisiana 70113
(504) 524-6221

1. The Board of Zoning Adjustments of the City of New Orleans through its chairman, William Katz
   7E05 City Hall
   Civic Center
   New Orleans, Louisiana 70112

2. The Department of Safety and Permits through its director,
   Evelyn Pugh
   7th Floor, City Hall
   Civic Center
   New Orleans, Louisiana 70112

3. The City of New Orleans through its mayor,
   The Honorable Ernest Morial
   2nd Floor
   City Hall, Civic Center
   New Orleans, Louisiana 70112

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

No. DIVISION DOCKET NO.

REBECCA MONTGOMERY, wife of/and ANTHONY A. SANCHEZ

VERSUS

THE BOARD OF ZONING ADJUSTMENTS OF THE CITY OF NEW ORLEANS, THE DEPARTMENT OF SAFETY AND PERMITS OF THE CITY OF NEW ORLEANS, and THE CITY OF NEW ORLEANS

FILED: _____

DEPUTY CLERK

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the state and parish aforesaid, personally came and appeared Rebecca Montgomery, wife of/and Anthony A. Sanchez, petitioners in the captioned matter, who upon me being first duly sworn did depose and say that all of the facts alleged in the foregoing petition are true and correct to the best of their knowledge and belief.

/s/ Rebecca Montgomery Sanchez
REBECCA MONTGOMERY SANCHEZ

/s/ Anthony A. Sanchez
ANTHONY A. SANCHEZ

SWORN TO AND SUBSCRIBED
before me, this 30th day
of August, 1984.

/s/ Regel L. Bisso

NOTARY PUBLIC

CIVIL DISTRICT COURT FOR THE PARISH
OF ORLEANS
STATE OF LOUISIANA

No. DIVISION DOCKET NO.

REBECCA MONTGOMERY, wife of/and ANTHONY A. SANCHEZ

VERSUS

THE BOARD OF ZONING ADJUSTMENTS OF THE CITY OF NEW ORLEANS, THE DEPARTMENT OF SAFETY AND PERMITS OF THE CITY OF NEW ORLEANS, and THE CITY OF NEW ORLEANS

FILED: _____
DEPUTY CLERK

ORDER

The petition in the above entitled and numbered cause having been duly considered:

IT IS ORDERED that a writ of certiorari issue herein, directing the Board of Zoning Adjustments of The City of New Orleans, through its chairman, William Katz, to transmit to this Court on or before the 10th day or September, 1984, the record, or a certified copy thereof, of the proceedings complained of by petitioners herein, to the end that the validity of said proceedings may be ascertained.

IT IS FURTHER ORDERED that the defendants, the Board of Zoning Adjustments of the City of New Orleans, the Department of Safety and Permits of the City New Orleans, and The City of New Orleans, shall show cause, in this court, on the 10th day of September, 1984, at _____ o'clock a.m. why the relief prayed for in the foregoing petition should not granted.

New Orleans, Louisiana, this 31st day of August, 1984.

_____

DISTRICT JUDGE

APPENDIX H

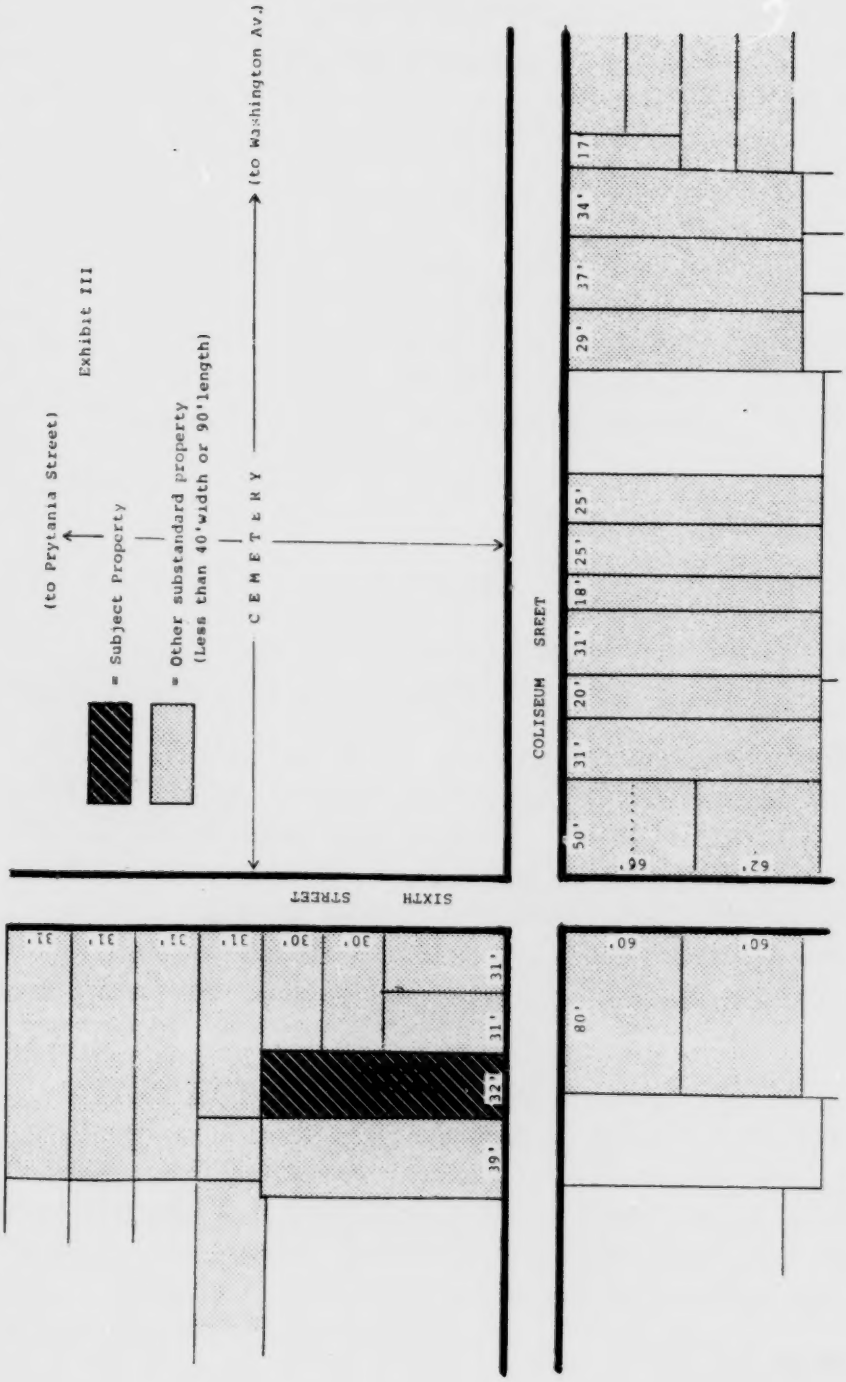
Exhibit III
(to Prytania Street)
= Subject Property
= Other substandard property
(Less than 40'width or 90'length)
C E M E T E R Y
(to Washington Av.)
SIXTH STREET
COLISEUM SREET
50'
66'
62'
31'
20'
31'
18'
25'
25'
29'
37'
34'
17'
60'
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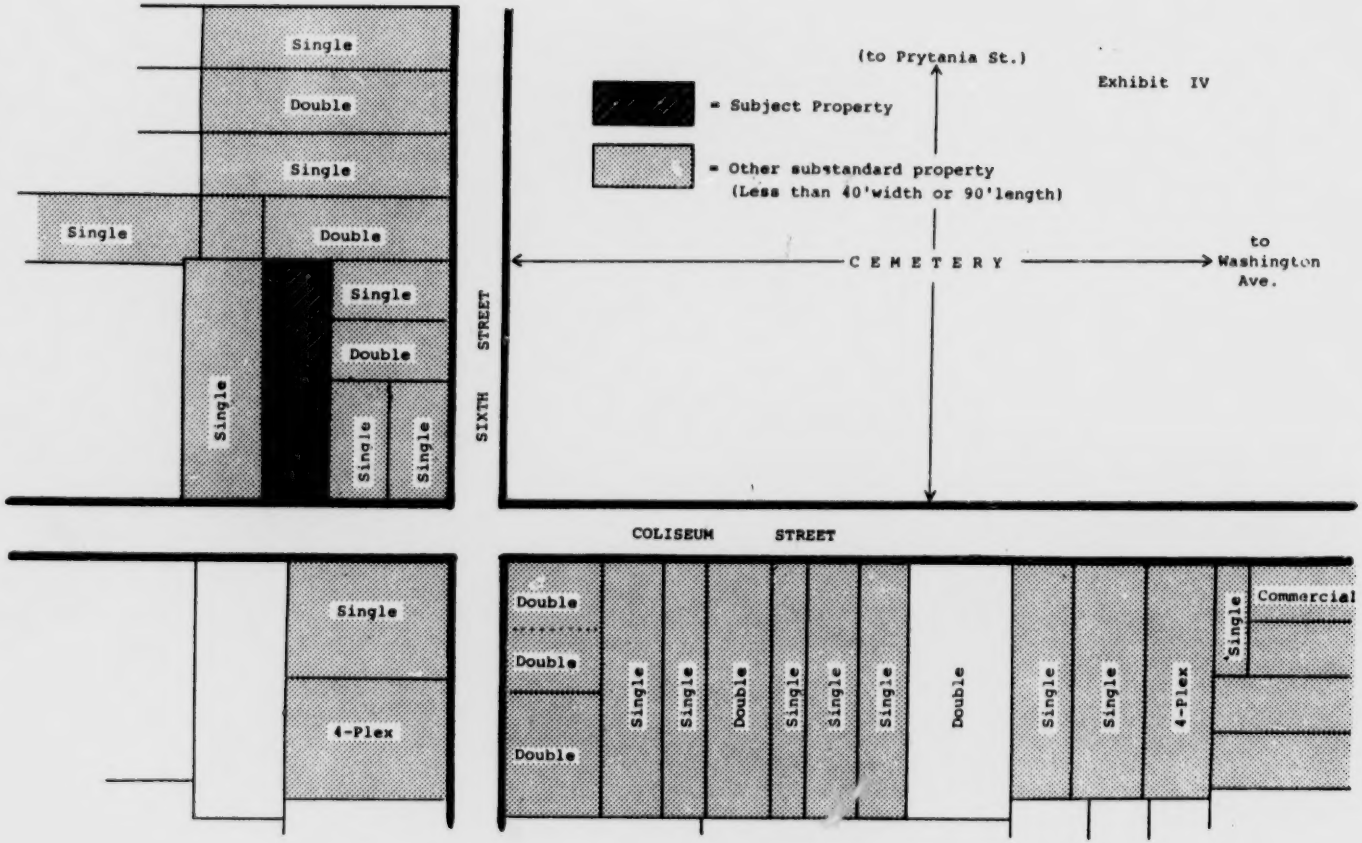
39'
32'
31'
30'


Single
Double
Single
Single
Double
Single
Double
Single
Single
Single
(to Prytania St.)
Exhibit IV
= Subject Property
= Other substandard property
(Less than 40'width or 90'length)
C E M E T E R Y
to
Washington
Ave.
SIXTH STREET
COLISEUM STREET
Single
4-Plex
Double
Double
Double
Single
Single
Double
Single
Single
Single
Double
Single
Single
4-Plex
Single
Commercial